

JUDGE SWAIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEDRO ORTIZ,

Plaintiff,

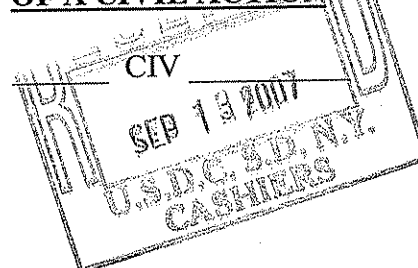
v.

LOCAL 32BJ,

Defendant.

X
07 CIV 8030

**NOTICE OF REMOVAL
OF A CIVIL ACTION**



TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

Defendant LOCAL 32BJ, SERVICE EMPLOYEES INTERNATIONAL UNION ("Local 32BJ" or "Union"), through its attorneys, pursuant to 28 U.S.C. §§ 1441 and 1446, respectfully seeks removal of an action commenced in New York state court and states:

1. Plaintiff PEDRO ORTIZ commenced a civil action in the Civil Court of the City of New York, Small Claims Part, Bronx County, entitled *PEDRO ORTIZ v. LOCAL 32BJ*, bearing Index No. SCB 2380/07. Local 32BJ was served with the Notice of Claim and Summons ("Claim") by mail delivery on August 27, 2007, at its business offices located in Manhattan, New York. A copy of the Claim is annexed hereto as Exhibit A.

THE PARTIES

2. Defendant Local 32BJ is a labor organization within Section 2(5) of the National Labor Relations Act ("Act"), 29 U.S.C. § 152(5), in that it represents approximately 85,000 employees in the property service industry, including in the greater New York City metropolitan area. Local 32BJ's headquarters are located at 101 Avenue of the Americas, New York, New York, 10013.

3. Plaintiff was formerly employed at 525 East 72nd Street, New York, New York as a doorman, under a collective bargaining agreement between his employer, Solow Management Corporation ("Employer"), and Local 32BJ.

THE STATE COURT ACTION

4. Plaintiff's Claim states that Ortiz' action is "to recover monies arising out of Local 32BJ releasing \$2,971.12 without proper legal document."

5. Over the course of his employment at 525 East 72nd Street, Plaintiff filed twelve grievances with Local 32BJ complaining that his Employer had breached the collective bargaining agreement.

THE COURT'S REMOVAL JURISDICTION

6. While the Claim does not identify the cause of action against the Union, the only cognizable cause of action that Plaintiff could be asserting against Local 32BJ is for breach of its duty of fair representation in connection with the Union's handling of his workplace grievances under the collective bargaining agreement. See Vaca v. Sipes, 386 U.S. 171 (1967) (union breaches duty of fair representation when it fails to enforce a collective bargaining agreement for reasons that are arbitrary, discriminatory, or in bad faith).

7. Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, provides for federal jurisdiction for any claim involving a "violation of [a] contract[] between an employer and a labor organization representing employees..." While a "hybrid" action under Section 301 generally states a claim against the employer for breach of the collective bargaining agreement and against the plaintiff's union for the manner in which it handled the plaintiff's grievance of the breach, federal courts have jurisdiction over Section 301 duty of fair representation suits against unions, whether or not such a suit is accompanied by a claim against the employer. See

Breinenger v. Sheet Metal Workers Int'l Ass'n, 493 U.S. 67, 80-81 (1989). Therefore, this Court has jurisdiction under Section 301 over the Plaintiff's claim, which may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

8. There have been no proceedings in the State Court action, and Local 32BJ has not served an answer, made motions, or made any appearance or argument in that action.

9. Defendant Local 32BJ submits this Notice of Removal without waiving any defense to the claims asserted in the Claim or conceding that the Plaintiff has pled claims upon which relief may be granted.

10. This Notice of Removal is filed within 30 days after receipt of the Claim by Local 32BJ and before any proceedings thereon were held in the State Court action.

11. WHEREFORE, Defendant Local 32BJ respectfully requests that the State Court action be removed from the Civil Court of the City of New York, Small Claims Part, Bronx County, to this Court.

Dated: New York, New York
September 13, 2007

Office of the General Counsel
SEIU, Local 32BJ

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